



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 8, 1994

Honorable Eugene D. Taylor
Williamson County Attorney
405 Martin Luther King, Box 3
Georgetown, Texas 78626

Letter Opinion No. 94-088

Re: Whether a county may levy a special tax pursuant to section 62.001 of the Human Resources Code for the operation of a juvenile detention facility within the county and related question (RQ-733)

Dear Mr. Taylor:

At the behest of the Williamson County Judge, you have asked two questions pertaining to section 62.001 of the Human Resources Code. You ask first whether Williamson County may assess a dedicated tax for the operation of a juvenile detention facility within the county. Second, you ask whether Williamson County may use the revenues such a tax will generate to fund a contract with a private facility operator for the detention of children within the county.

Section 62.001 of the Human Resources Code provides in pertinent part as follows:

(a) Any county may establish detention homes and parental schools for juveniles. The commissioners court may appropriate necessary funds from the general fund of the county to establish, equip, and maintain detention homes and parental schools for the juveniles of the county.

(b) Any county in which no detention home or parental school exists may appropriate funds necessary to pay for the proper care and training of its juveniles in the detention home or parental school of any county that agrees to receive the juveniles. The cost of the care shall be agreed on by the commissioners courts of the counties concerned.

(c) If, in the opinion of the commissioners court, it is necessary to levy a special tax to establish and maintain a detention home or parental school or to pay for the care and training of juveniles as provided by Subsection (b) of this section, the commissioners court may hold a special election on the question of levying the tax. If a petition signed by 10 percent of the qualified voters of the county is

submitted requesting a special election, the commissioners court shall hold the special election.

A county commissioners court is a court of limited jurisdiction; it may exercise only those powers that the state constitution and statutes confer upon it, either explicitly or implicitly. Attorney General Opinion V-1162 (1951) at 2 (and sources cited therein); *see* Attorney General Opinion MW-473 (1982) at 1 (and sources cited therein). The county commissioners court is the only governmental body authorized to execute contracts binding on the county, unless a statute specifically provides otherwise.¹ *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941); *accord* Attorney General Opinion O-6125 (1944) at 3-4 (quoting *Anderson v. Wood*); 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 5.13, at 157 (Texas Practice 1989).

In subsection (c), the phrase “as provided by Subsection (b) of this section” clearly modifies “to pay for the care and training of juveniles.” Your first question asks whether the phrase “as provided by Subsection (b) of this section” also modifies “to establish and maintain a detention home or parental school.” We conclude that it does not. Subsection (b) authorizes a county in which no detention home or parental school exists to pay for the proper care and training of its juveniles staying in the detention home or parental school of another county. Subsection (a), on the other hand, authorizes a county to establish detention homes and parental schools for juveniles.

In our opinion, “to establish and maintain a detention home or parental school” is a reference to the county’s authority under subsection (a). “To pay for the care and training of juveniles” is a reference to the county’s authority under subsection (b). The reference in subsection (c) to subsection (b) does not limit the county’s authority to levy a special tax to establish and maintain a detention home or parental school for juveniles of the county. Of course, the county may not levy a special tax for any purpose without holding an election on the question in accordance with subsections (c) and (d) of section 62.001.

We next consider your second question, whether a county may use the revenues from a special purpose tax the county has collected pursuant to section 62.001(c) to fund a contract with a private facility operator for the detention of children within the county. As we have stated above, subsection (c) authorizes a county to levy a special tax to establish and maintain, in accordance with subsection (a), a detention home or parental school for juveniles of the county. This office previously has determined that, under the statutory predecessor to section 62.001(a), a county may contract with a private entity to operate the county’s detention home or parental school. *See* Attorney General Opinions M-843 (1971) at 4 (concluding that Potter County may contract with private nonprofit

¹A commissioners court may delegate its contracting authority to an appointed agent, Local Gov’t Code § 262.001(a), but the commissioners court must provide the agent with sufficient guidelines so that the court avoids delegating any of its discretionary authority. 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 5.13, at 158 (Texas Practice 1989).

entity to provide public funds in exchange for care and supervision of juvenile delinquents); O-6125 (1944) at 5 (concluding that Bexar County Commissioners Court may enter contract with group of private individuals or with charitable corporation under which private entity would provide for all delinquent and dependent boys committed to county school for boys); *see also* Attorney General Opinion H-392 (1974) at 2 (concluding that county may contract with other counties for custodial care of minor children); *cf.* Attorney General Opinion O-7102 (1946) at 3 (concluding that county authorized to lease to private individual facility on county farm to use as home for elderly).

Your question requires us explicitly to make the next logical leap: If subsection (c) authorizes a county to levy a special tax to establish and maintain a detention home or parental school, as subsection (a) permits a county to do, and if, as this office has stated, subsection (a) authorizes a county to contract with a private entity for the establishment and maintenance of detention homes and parental schools, then does subsection (c) authorize a county to levy a special tax to fund a contract with a private entity to establish and maintain a detention home and parental school? We believe that such a use of the special tax is within a commissioners court's scope of authority. We therefore conclude that a county may apply the revenues from a special tax that the county collects pursuant to section 62.001(c) of the Human Resources Code to fund a contract with a private facility operator for the detention of children within the county.²

²Article III, section 52(a) of the Texas Constitution prohibits the legislature from authorizing any political subdivision of the state to grant public money to an individual. *See also* Tex. Const. art. III, §§ 50, 51; Attorney General Opinion H-1010 (1977) at 2 (observing that language applicable to political subdivisions in article III, section 52 is same as that found in article III, sections 50 and 51). *See generally* 1 GEORGE D. BRADEN, THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 232-35, 257-59 (1977) (explaining article III, sections 51 and 52 of Texas Constitution). This office has interpreted article III, section 52(a) to prohibit a grant for private purposes only; article III, section 52(a) does not prohibit a grant of public money for public purposes, even a grant to an individual, if the political subdivision granting the money places sufficient controls on the transaction to ensure that the public purpose is served. *See* Attorney General Opinion JM-1229 (1990) at 3-5 (and sources cited therein); JM-1209 (1990) at 1 (and sources cited therein); 1 BRADEN, *supra*, at 233. Whether a particular grant of money serves a public purpose, and whether the governing board of the relevant political subdivision has placed sufficient controls on the transaction to ensure that the public purpose is served is a matter that the governing board must decide in the first instance, subject to judicial review. *See* Letter Opinion No. 93-93 (1993) at 2. In this case, the county commissioners court must determine that its proposed grant of money to a private facilities operator serves a public purpose and that the county has placed sufficient controls on the transaction to ensure that the public purpose will be attained. The commissioners court's determination is subject to judicial review.

S U M M A R Y

Section 62.001(c) of the Human Resources Code authorizes a county to levy a special tax to establish and maintain a detention home or parental school for the juveniles of the county pursuant to section 62.001(a) or to levy such a tax to pay another county for the proper care and training of its juveniles pursuant to section 62.001(b). Of course, the county may not levy a special tax in either case without holding an election on the question in accordance with subsections (c) and (d) of section 62.001.

A county may expend the revenues it generates from a special tax it has levied under subsection (c) to fund a contract with a private facility operator for the detention of children within the county.

Yours very truly,

A handwritten signature in black ink, reading "Kymberly K. Oltrogge". The signature is fluid and cursive, with the first name "Kymberly" and last name "Oltrogge" clearly legible.

Kymberly K. Oltrogge
Assistant Attorney General
Opinion Committee